STATE OF MICHIGAN

IN THE SUPREME COURT

DRAGEN PERKOVIC,

Plaintiff-Appellant,

-vs-

ZURICH AMERICAN INSURANCE COMPANY,

Defendant-Appellee.
_____/

Supreme Court No. 152484

Court of Appeals No. 321531

Wayne County Circuit Court No. 09-019740-NF

PLAINTIFF-APPELLANT'S SUPPLEMENTAL BRIEF SUBMITTED PURSUANT TO THE COURT'S MAY 25, 2016, ORDER

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STATEMENT REGARDING QUESTIONS PRESENTED

I. SHOULD THIS COURT GRANT LEAVE TO APPEAL TO CONSIDER THE IMPORTANT QUESTION OF WHETHER THE COURT OF APPEALS ERRED IN AFFIRMING THE GRANT OF SUMMARY DISPOSITION TO THE DEFENDANTS ON THE BASIS OF THE ONE-YEAR LIMITATIONS PERIOD PROVIDED IN MCL 500.3145(1) WHERE THE DEFENDANT WAS SUPPLIED WITH A NOTICE WITHIN ONE YEAR OF THE ACCIDENT THAT MET ALL OF THE REQUIREMENTS OF THAT STATUTE?

Plaintiff-Appellant says "Yes."

Defendant-Appellee says "No."

II. SHOULD THIS COURT, EITHER BY SUMMARY ORDER OR FULL OPINION, REVERSE THE COURT OF APPEALS SEPTEMBER 10, 2015 DECISION SINCE THAT DECISION IS (BY THE COURT OF APPEALS OWN ASSESSMENT) CONTRARY TO THE UNAMBIGUOUS TEXT OF MCL 500.3145(1)?

Plaintiff-Appellant says "Yes."

Defendant-Appellee says "No."

STATEMENT OF MATERIAL PROCEEDINGS AND FACTS

On February 28, 2009, Dragen Perkovic was operating a semi-truck that he owned on eastbound I-80 in Nebraska. At the time, Mr. Perkovic was working as an independent contractor for E. L. Hollingsworth, a company to which he had leased the semi-truck.

As Mr. Perkovic was driving on I-80, he was involved in an accident in which he was injured. Mr. Perkovic had to be taken by ambulance to the Nebraska Medical Center's emergency department for treatment of the injuries he sustained in the accident.

As of February 2009, Mr. Perkovic had personal automobile insurance through Citizens Insurance Company of the Midwest (hereinafter: Citizens). Mr. Perkovic had also purchased "bobtail" insurance coverage through another insurer, Hudson Insurance Company (hereinafter: Hudson). In addition, E. L. Hollingsworth, the company for whom Mr. Perkovic was working at the time of the accident, had insurance through Zurich American Insurance Company (hereinafter: Zurich).

On April 30, 2009, two months after Mr. Perkovic received emergency treatment at the Nebraska Medical Center, that institution sent a bill for the services it had provided to Mr. Perkovic on February 28, 2009 along with various medical records. *See* Exhibits A and B to Plaintiff's Application for Leave to Appeal.[1] The material that the Nebraska Medical Center mailed to Zurich on April 30, 2009, included Mr. Perkovic's name and address as well as the time and place of the accident and the nature of his injury. The material sent by the Nebraska Medical Center also included a Zurich policy number under which it was making its claim for reinbursement,

[1]With the exception of a new Exhibit F which has been added to this brief, all exhibit references in this brief will be to the exhibits that were attached to Mr. Perkovic's October 22, 2015 application for leave to appeal.

#TRK9262727. *See* Exhibit B, at 1.

On May 19, 2009, Zurich American sent the billing and medical records back to the Nebraska Medical Center. *See* Affidavit of James White (Exhibit C), ¶7. In returning this material, Zurich stamped on the billing that had been sent by the Nebraska Medical Center: "No injury report on file for this person." *See* Billing (Exhibit A).

In August 2009, Mr. Perkovic filed suit in the Wayne County Circuit Court for unpaid no-fault benefits arising out of his February 28, 2009 accident. Originally, Mr. Perkovic named only Citizens as the insurer responsible for paying these benefits. Approximately six months later, Mr. Perkovic amended his complaint to add Hudson, the issuer on the bobtail policy. Finally, on May 25, 2010, he amended his complaint a second time, this time naming a third insurer, Zurich, as a defendant.

The parties proceeded to litigate the question of which of the three insurers was responsible for the payment of Mr. Perkovic's no-fault benefits. The circuit court initially ruled that Citizens, the insurer on Mr. Perkovic's personal policy, was responsible for the payment of no-fault benefits arising out of the February 2009 accident. On reconsideration, the circuit court reversed itself and concluded that Hudson had to pay these benefits.

That ruling was appealed to the Court of Appeals. *Perkovic v Hudson Ins Co*, Court of Appeals No. 302868. On December 12, 2012, a panel of the Court of Appeals reversed the circuit court's ruling, concluding that it was Zurich that was responsible for paying Mr. Perkovic's no-fault benefits.[2]

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[2]This Court denied an application for leave to appeal that sought review of the Court of Appeals December 12, 2012 opinion. *Perkovic v Hudson Ins Co*, 493 Mich 971; 829 NW2d 197 (2013).

Following remand, Zurich moved for summary disposition claiming that Mr. Perkovic's cause of action was barred by the one year statute of limitations provided in MCL 500.3145(1).

Mr. Perkovic responded to Zurich's motion by arguing that this case was not subject to the one-year limitations period provided in MCL 500.3145(1) based on one of the two statutory exceptions to that limitations period set out in that statute. Specifically, Mr. Perkovic argued that, based on the materials that were mailed to Zurich by the Nebraska Medical Center in April 2009, Zurich received a written notice of injury within one year of the accident that exempted his claim from the statute of limitations set out in MCL 500.3145(1).

Attached to Mr. Perkovic's response was an affidavit signed by James White, the keeper of records for the Nebraska Medical Center, along with the billing and medical records that the Nebraska Medical Center mailed to Zurich in May 2009. *See* White Affidavit (Exhibit C). In that affidavit, Mr. White attested to the fact that the Nebraska Medical Center sent Zurich a bill for the medical services it had provided to Mr. Perkovic, "to obtain payment for [Mr. Perkovic's] accident related injuries." *Id.*, ¶6.

The circuit court, after conducting a hearing on Zurich's motion on October 4, 2013, issued a written opinion granting that motion on February 20, 2014. *See* Exhibit D. In that opinion, the circuit court concluded that Mr. Perkovic's claim against Zurich was barred because it was filed more than one year after the February 28, 2009 accident. In reaching this result, the circuit court conceded that the Nebraska Medical Center's billing and medical records that were mailed to Zurich in May 2009 "have all of the . . . information" required by MCL 500.3145(1). Opinion (Exhibit D), at 8. In spite of that fact, the circuit court found this material was insufficient to exempt this case from §3145(1)'s one-year limitations period because "there is no indication that the documents were

sent with the intent to file a claim." *Id.*

Following the denial of a motion for reconsideration, Mr. Perkovic appealed the dismissal of his case to the Court of Appeals. On September 10, 2015, a panel of that Court issued a published decision affirming the circuit court's decision granting summary disposition to Zurich. *Perkovic v Zurich American Ins Co*, 312 Mich App 244; 876 NW2d 839 (2015).

Like the circuit court, the Court of Appeals acknowledged that the written material sent to Zurich by the Nebraska Medical Center in April 2009 was "sufficient in content" to meet the requirements of the final sentence of §3145(1). 312 Mich App at 258. Despite this acknowledgment, the Court of Appeals ruled that Mr. Perkovic could not invoke the exception to the one-year statute of limitations provided in that statute. The panel concluded that Mr. Perkovic could not claim this exception to the one-year statute of limitations for the following reasons:

> In this case, however, no letter or written notice form was sent that would alert defendant to the possible pendency of a no-fault claim. *See Joiner,* 137 Mich App at 472. Rather, the medical bill and medical records were sent to defendant without any indication of a possible claim. In fact, according to White, the bill and records were sent for the purpose of obtaining payment. This notice of injury, which was unrelated to a possible claim for no-fault benefits, did not trigger defendant's investigative procedures or advise defendant of the need to appropriate funds for settlement. See *id.* at 471. Similar to the death certificate in *Heikkinen,* 124 Mich App at 464, the medical bill and medical records, although sufficient in content, did not fulfill the purposes of the statute. Accordingly, plaintiff did not provide sufficient notice pursuant to MCL 500.3145(1) and the trial court properly granted summary disposition in favor of defendant.
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> 312 Mich App at 258.

Mr. Perkovic filed an application for leave to appeal in this Court in October 2015. On May 25, 2016, this Court issued an order instructing the Clerk to schedule oral argument on Mr. Perkovic's application for leave. *Perkovic v Zurich America Ins Co*, 499 Mich 935; 878 NW2d 885

(2016). The Court's May 25, 2016 order further provided that the parties were to file supplemental briefs "addressing whether the plaintiff, or someone on his behalf, satisfied the notice requirements of MCL 500.3145(1)."

ARGUMENT

I. THE COURT OF APPEALS ERRED IN CONCLUDING THAT SUMMARY DISPOSITION WAS APPROPRIATE UNDER THE ONE-YEAR LIMITATIONS PERIOD PROVIDED IN MCL 500.3145(1).

This case presents a significant question of Michigan law regarding the appropriate interpretation of the statute of limitations applicable to a claim for no-fault benefits, MCL 500.3145(1). That statute provides:

> An action for recovery of personal protection insurance benefits payable under this chapter for accidental bodily injury may not be commenced later than 1 year after the date of the accident causing the injury unless written notice of injury as provided herein has been given to the insurer within 1 year after the accident or unless the insurer has previously made a payment of personal protection insurance benefits for the injury. If the notice has been given or a payment has been made, the action may be commenced at any time within 1 year after the most recent allowable expense, work loss or survivor's loss has been incurred. However, the claimant may not recover benefits for any portion of the loss incurred more than 1 year before the date on which the action was commenced. The notice of injury required by this subsection may be given to the insurer or any of its authorized agents by a person claiming to be entitled to benefits therefor, or by someone in his behalf. The notice shall give the name and address of the claimant and indicate in ordinary language the name of the person injured and the time, place and nature of his injury.

MCL 500.3145(1).

Under this statute, an action for the recovery of no-fault benefits must be commenced within one year after the date of the accident. The text of §3145(1), however, provides two circumstances in which this one-year limitations period will not bar a claim for no-fault benefits. *Jesperson v Auto Club Ass'n*, 499 Mich 29, 33-34; 878 NW2d 799 (2016). At issue in this case is one of these two exceptions.

MCL 500.3145(1) provides that a suit filed more than one year after the accident will not be subject to dismissal on limitations grounds where "written notice of injury *as provided herein* has

been given to the insurer within 1 year after the accident . . .” (emphasis added). The final two sentences of §3145(1) describe the format and the contents of the written notice that will be sufficient to exempt a case from the one-year limitations period. According to the penultimate sentence of §3145(1), the written notice may be given “by a person claiming to be entitled to benefits therefore, or by someone in his behalf.” The final sentence of §3145(1) sets out the required contents of such a notice: “The notice shall give the name and address of the claimant and indicate in ordinary language the name of the person injured and the time, place and nature of his injury.” *Id*.

Zurich was added to this case as a defendant in May 2010, more than one year after Mr. Perkovic’s accident. Thus, the critical question presented here is whether the April 2009 written material sent by the Nebraska Medical Center to Zurich constituted appropriate notice under §3145(1) to avoid the effect of that statute’s one-year limitation period.[3]

The single most salient feature of this case for purposes of the “written notice” exception to §3145(1)’s one-year statute of limitations is that none of the relevant participants - the plaintiff, the defendant, the circuit court or the Court of Appeals - has challenged the fact that the material supplied to Zurich by the Nebraska Medical Center to Zurich in April 2009 met the requirements of the final sentence of §3145(1). Zurich has never argued that the “written notice” exception of §3145(1) does not apply on the ground that the material that the Nebraska Medical Center sent did

[3]Zurich devotes a separate section of its Supplemental Brief to a discussion of other law establishing that if Mr. Perkovic cannot claim the benefit of the “written notice” exception to the one-year limitations period of §3145(1), his case would be barred by the statute of limitations. The Court need not delve too deeply into these other legal principles since plaintiff is willing to concede that if the “written notice” exception contained in §3145(1) does not apply in these circumstances, Mr. Perkovic’s action against Zurich is barred by the statute of limitations.

not include the name and address of the claimant,[4] the name of the person injured or the time, place and nature of Mr. Perkovic's injuries. Moreover, the circuit court indicated in its February 14, 2014 opinion that "the bill and medical record in the present case have all the required information" called for by §3145(1). Opinion (Exhibit D), at 7-8. Finally, the Court of Appeals, after recounting the substance of the material the Nebraksa Medical Center provided to Zurich, conceded that "the notice provided plaintiff's name and address, and indicated in ordinary language the name of the person injured and the time, place, and nature of his injury. 312 Mich App at 252. In short, the Court of Appeals acknowledged that the material mailed to Zurich in April 2009 was "sufficient in content" to satisfy the last sentence of §3145(1). 312 Mich App at 258.

The Court of Appeals patently erred in determining that a written notice "sufficient in content" to meet the requirements of §3145(1)'s exception to the one-year statute of limitations was somehow insufficient to trigger that exception.

In its September 10. 2015 opinion, the Court of Appeals certainly began its analysis of the statutory interpretation question presented in this case on the proper footing. The Court of Appeals correctly cited to another of this Court's decisions construing §3145(1), *Devillers v Auto Club Ins Ass'n*, 473 Mich 562, 582; 702 NW2d 539 (2005), for the proposition that this statute "must be enforced according to its plain meaning, and cannot be judicially revised or amended to harmonize with the prevailing policy whims of members of this Court." 312 Mich App at 252. Yet, after citing

[4]To the extent there is some ambiguity in the word "claimant" in the final sentence of §3145(1), that ambiguity is irrelevant here. The word "claimant" as used in that section could theoretically describe either Mr. Perkovic or the Nebraska Medical Center. This ambiguity is of no consequence here since the materials sent by the Nebraska Medical Center to Zurich included both that facility's address and Mr. Perkovic's address.

to the well established law reflected in the *Devillers* opinion, the Court of Appeals proceed to ignore that law.

Rather than applying the text of §3145(1) as it is written, the Court of Appeals reached back into what (at least from a statutory interpretation standpoint) might well be classified as ancient Michigan legal history to justify a decidedly non-textual approach to the issue presented in this case. Putting aside the fact that the written notice mailed by the Nebraska Medical Center was "sufficient in content" to satisfy §3145(1)'s exception, the panel focused instead on several decisions construing §3145(1) that were decided by the Court of Appeals between the years 1980 and 1984, *Dozier v State Farm,* 95 Mich App 121; 290 NW2d 408 (1980), *Walden v State Farm Mut Auto Ins Co,* 105 Mich App 528; 307 NW2d 367 (1981), *Lansing Gen Hospital, Osteopathic v Gomez,* 114 Mich App 814; 319 NW2d 683 (1982), *Heikkinen v Aetna Casualty & Surety Co,* 124 Mich App 459; 335 NW2d 3 (1981), and *Joiner v Michigan Mutual Ins Co,* 137 Mich App 464; 357 NW2d 875 (1984). In doing so, the Court of Appeals resurrected an approach to statutory interpretation that is completely antithetical to everything this Court has written on this subject over the last 16 years or so.

In *Dozier,* the plaintiff claimed an exemption to §3145(1)'s one-year limitations period based on a written notice that did *not* satisfy all of the requirements of that statute's final sentence. The Court of Appeals determined that this deficiency would not affect plaintiff's request for relief from the one-year statute of limitations provided that the written notice "substantially complied" with §3145(1)'s notice provision. 95 Mich App at 128-129.

Rather than giving primacy to the actual wording of §3145(1), the *Dozier* Court fixed its attention on the perceived "purpose" behind that statute's notice requirement. The panel indicated that "notice provisions are designed . . . to provide time to investigate and to appropriate funds for

settlement purposes." 95 Mich App at 128. The *Dozier* Court went on to rule that as long as these *purposes* behind §3145(1)'s written notice provision were served, any failure of a notice to comply with the specific requirements set out in the text of §3145(1) could be overlooked. Thus, the essence of the holding in *Dozier* was that "substantial compliance with the written notice provision which does in fact apprise the insurer of the need to investigate and to determine the amount of possible liability of the insurer's fund, is sufficient compliance under §3145(1)." 95 Mich App at 128.

The holding in *Dozier* was repeated one year later in *Walden* where once again the written notice that the plaintiff was relying on to extend the statute of limitations did not supply all of the information called for by the final sentence of §3145(1). The Court in *Walden* dismissed that defendant's arguments that the written notice did not comply completely with §3145(1), holding that "in our opinion, this is an unnecessary, overly technical, literal construction and application of the notice provision of §3145(1)." 105 Mich App at 532-533.

Like *Dozier,* the panel in *Walden* premised its decision on the "purpose" behind §3145(1)'s notice provision, rather than the express language of that subsection. Since that "purpose" was, in the view of the *Walden* Court, served by the notice that the plaintiff was relying on, the Court of Appeals was willing to disregard the fact that all of the information required by §3145(1)'s last sentence had not been provided to the defendant. 105 Mich App at 533-534.

In *Gomez*, a third case relied upon by the Court of Appeals in its September 10, 2015 decision, the Court of Appeals again confronted a plaintiff's claim to an extension of the one-year limitations period of §3145(1) based on written material that clearly did not meet all of the requirements of the last sentence of §3145(1). The Court of Appeals was again willing to excuse

this lack of compliance with the governing statute on the ground that "strict adherence to the statutory notice requirement should not be required." *Gomez,* 114 Mich App at 822.

The Court in *Gomez* found that the written notice provided to a no-fault insurer "substantially complied" with §3145(1) since it served the "purposes" of that statute's notice provision: "The written notification described the time and the place of the accident. This was sufficient to provide time for the defendant . . . to investigate the accident." *Id* at 825.

Dozier, Walden and *Gomez* all stand for the proposition that, as long as the written notice to a no-fault insurer served the perceived "purposes" behind §3145(1)'s notice provision, the failure of that written notice to technically comply with all of the requirements of §3145(1) would not prevent the extension of the statute of limitations. The ultimate triumph of "statutory purpose" over statutory text was reflected in *Heikkinen*, a fourth 1980 era case the Court of Appeals relied upon in its September 10, 2015 decision. In *Heikkinen*, the plaintiff sought to extend the statute of limitation of limitations on the basis of a death certificate that had been served on a no-fault insurer. The Court in *Heikkinen* found that this document fully complied with the literal text of §3145(1) since it "contains all the information required of notice under the statute." 124 Mich App at 462.[5]

Yet, despite full compliance with the language of §3145(1), the *Heikkinen* Court went on to hold that the one-year statute of limitations could not be extended because the death certificate did not accomplish the "purposes" behind that statute's notice provision. Thus, the Court ruled in

[5]It is certainly arguable that the written notice involved in *Heikkinen* did not strictly comply with §3145(1) because it did not represent a notice "claiming to be entitled to benefits . . . " as the penultimate sentence of that statute requires. But, that is not the way the panel in *Heikkinen* saw it. Rather, that Court construed the death certificate at issue in that case as a writing that "strictly complied" with the statute. 124 Mich App at 463-464.

Heikkinen that "[p]laintiff has strictly complied with the contents requirements for notice but did not fulfill the purposes of the limitations and notice provisions of §3145(1)." 124 Mich App at 463-464.

The Court of Appeals in its decision in this case applied the principle of law reflected in *Heikkinen* in rejecting Mr. Perkovic's argument that his cause of action was not barred by the statute of limitations. According to the panel, while the material sent by the Nebraska Medical Center to Zurich may have been "sufficient in content" to satisfy all of the requirements of §3145(1), that notice did not satisfy the "purposes" behind the statute's notice requirement:

> In this case, however, no letter or written notice form was sent that would alert defendant to the possible pendency of a no-fault claim. Rather, the medical bill and medical records were sent to defendant without any indication of a possible claim. In fact, according to White, the bill and records were sent for the purpose of obtaining payment,. This notice of injury, which was unrelated to a possible claim for no-fault benefits, *did not trigger defendant's investigative procedures or advise defendant of the need to appropriate funds for settlement.*
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> 312 Mich App at 258 (emphasis added).

As the last sentence of this quotation demonstrates, the Court of Appeals found that while Mr. Perkovic could establish the existence of a written notice served on Zurich that was "sufficient in content" to satisfy §3145(1), his argument failed because the written notice did not serve the "purposes" behind §3145(1)'s notice provision that had been previously identified in *Dozier, Walden, Gomez* and *Heikkinen* .

While *Dozier, Walden, Gomez* and *Heikkinen* may have accurately stated Michigan law as it existed in the early to mid 1980's, the holdings in these cases are completely out of step with the approach to statutory interpretation that this Court has consistently employed in the last sixteen

years.[6] What the Court of Appeals ruled in this case is that the literal text of §3145(1) must take a backseat to the purposes that this statute is designed to accomplish. This is a mystifying position for the Court of Appeals to take in the wake of this Court's frequent pronouncements on how statutes are to be interpreted.

In construing statutes, courts must give effect to the intent of the Legislature. That intent, however, is not to be found in what a particular court perceives as the "purpose" or the "goal" of the statute. Rather, that intent is to be found in the language of the statute itself. This Court held in *Roberts v Mecosta County General Hospital*, 466 Mich 57; 642 NW2d 663 (2002):

> An anchoring rule of jurisprudence, and the foremost rule of statutory construction, is that the courts are to effect the intent of the Legislature. To do so, we begin with an examination of the language of the statute. If the statute's language is clear and unambiguous, then we assume that the Legislature intended its plain meaning and the statute is enforced as written. A necessary corollary of these principles is that a court may read nothing into an unambiguous statute that is not within the manifest intent of the Legislature as derived from the words of the statute itself.
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> *Id*. at 63.

This Court has also made it clear that the text of a statute cannot be altered by one court's perception of the underlying "purpose" of a statute or the "policy" behind that statute. As the Court indicated in *Elezovic v Ford Motor Co*, 472 Mich 408; 697 NW2d 851 (2005), "[t]his Court has been clear that the policy behind a statute cannot prevail over what the text actually says. The text must

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[6] As just one example, the idea expressed in these cases that the notice required by §3145(1) need only "substantially comply" with that statute's requirements is directly at odds with numerous decisions of this Court construing other pre-suit notice statutes. *See e.g. Rowland v Washtenaw County Road Commission*, 477 Mich 197; 731 NW2d 41 (2007); *McCahan v Brennan*, 492 Mich 730; 822 NW2d 747 (2012); *Jakupovic v City of Hamtramck*, 489 Mich 939; 798 NW2d 12 (2011); *Fairley v Dept of Corrections*, 497 Mich 290; 871 NW2d 129 (2015). Consistent with this Court's general approach to statutory interpretation, each of these cases has held that the notice provisions are to be enforced as written.

prevail." *Id* at 421-422. This Court has also cautioned that courts must be wary of a reliance on a perceived "purpose" of a statute where that "purpose" would undermine the text actually selected by the Legislature. In *Garg v Macomb County Community Mental Health Services*, 472 Mich 263, 285, n. 11; 696 NW2d 646 (2005), the Court warned that, "The words of any statute can be effectively undermined by a sufficiently generalized statement of 'purpose' that is unmoored in the actual language of the law."

In going beyond the text of §3145(1) and creating requirements that are not expressly provided for in that statute, the Court of Appeals committed obvious error. Having found that the written notice provided to Zurich in April 2009 met all of the requirements for application of "written notice" exception to the one-year statute of limitations, the Court of Appeals should have concluded that Mr. Perkovic's cause of action was not barred by the statute of limitations.

The Court of Appeals approach to statutory interpretation so badly misses the mark that no further discussion of its decision is required. But, even on its own terms, the Court of Appeals ruling predicted on the supposed "purpose" behind the notice provision of §3145(1) lacks merit. In concentrating its attention on the "purpose" behind §3145(1), the Court of Appeals was of the view that the material mailed by the Nebraska Medical Center in April 2009 "did not alert the defendant to the pendency of a no-fault claim." 312 Mich App 258. According to the Court of Appeals, the billing sent to Zurich by the Nebraska Medical Center did not represent the disclosure of a possible no-fault claim. Rather, in the words of the Court of Appeals, the materials that the Nebraska Medical Center sent "were sent for the purposes of obtaining payment." *Id.*

This is an awfully subtle distinction. As an insurance company doing business in the State of Michigan, Zurich has to be charged with knowledge of the fact that for a number of years,

Michigan courts have held that the provider of medical services to a person injured in an automobile accident has an independent right to claim and collect no-fault benefits against an insurer. *See e.g. Covenant Medical Center, Inc. v State Farm Mutual Auto Ins Co*, 313 Mich App 50; ___ NW2d ___ (2016); *Moody v Home Owners, Ins*., 304 Mich App 415, 440; 849 NW2d 31 (2014); *Lakeland Neurocare Centers v State Farm Mutual Auto Ins Co.*, 250 Mich App 35; 645 NW2d 59 (2002). There is, therefore, no reason why a request for payment for medical services provided by a hospital would *not* be the basis for a no-fault claim.

Moreover, it is important to note that in making its April 2009 request for reimbursement for the medical services it had provided to Mr. Perkovic, the Nebraska Medical Center made explicit reference to a specific Zurich policy. A copy of that policy is Exhibit F to this brief. That policy contains a endorsement for Michigan no-fault coverage that includes recovery of an insured's "reasonable and necessary medical expenses." Thus, even if this case is to be controlled by the "purpose" of §3145(1) as the Court of Appeals viewed it, there is no reason why the Nebraska Medical Center's material that was sent to Zurich in April 2009 would not have put them on notice of a potential claim for no-fault benefits arising out of Mr. Perkovic's February 2009 accident.

In the Supplemental Brief that it has filed in this Court, Zurich has offered several other arguments in support if its contention that the one-year limitations period of §3145(1) applies in this case. Foremost among these arguments is that Mr. Perkovic did not himself make a written claim for no-fault benefits within one year of the accident. The language of §3145(1) specifies only that the notice necessary to exempt a case from the one-year limitations period "may be given to the insurer . . . by a person claiming to be entitled to benefits therefor, or by someone in his behalf."

What is first noteworthy about this language is that it uses the permissive "may." Such a notice may certainly come from the injured party, but there is nothing in the language of this statute that indicates that it *must* come from any person in particular.

In addition, for reasons previously addressed in this brief, Michigan law recognizes that the Nebraska Medical Center, as the provider of medical services to a person injured in a vehicular accident, may properly "claim[] to be entitled to benefits" under the no-fault act. *See Covenant Medical Center, Inc,* 313 Mich App at 54; *Moody,* 304 Mich App at 440; *Lakeland Neurocare*, 250 Mich App at 42-43. Thus, even if the operative sentence of §3145(1) were written in mandatory language and the written notice had to be provided by a "person claiming to be entitled to benefits," the fact is that the Nebraska Medical Center would meet this requirement.

Zurich further notes in its Supplemental Brief that Mr. Perkovic neither knew of nor authorized the submission of the materials that the Nebraska Medical Center sent to Zurich in April 2009. This observation is entirely irrelevant in light of the fact that §3145(1) contains no requirement that the person injured in an automobile accident must know or approve of the written notice that exempts a claim from the one-year limitations period of that statute. To repeat the lesson of this Court's ruling in *Devillers,* §3145(1) "must be enforced according to its plain meaning, and cannot be judicially revised or amended to harmonize with the prevailing policy whims of members of this Court." 473 Mich at 582

In its Supplemental Brief, Zurich further goes to some length to explain its own policies related to its treatment of the material that was sent to it by the Nebraska Medical Center and it seeks to justify the fact that this material was returned to that facility without further investigation because there was "no injury report on file for this person." The disposition of this case has nothing to do

with Zurich's procedures when presented with the material sent by the Nebraska Medical Center. What this case concerns is the literal language of §3145(1) and whether a written notice meeting the criteria set out in that statute was submitted to Zurich within one year of Mr. Perkovic's accident.[7]

Zurich also relies in its Supplemental Brief on the Court of Appeals decision in *Robinson v Associated Truck Lines, Inc,* 135 Mich 571; 355 NW2d 282 (1984), to support its assertion that the material sent to it by the Nebraska Medical Center did not meet the requirements of §3145(1). In *Robinson,* the plaintiffs were injured in automobile accidents that occurred while they were within the scope of their employment. At the time the plaintiffs were injured, Michigan law recognized that their sole remedy in these circumstances was under the Workers Compensation Act. *See Mathis v Interstate Motor Freight System,* 408 Mich 164; 289 NW2d 708 (1980). Thus, at the time they made their written request for benefits, the plaintiffs could not have requested payment of no-fault benefits. The Court of Appeals in *Robinson,* relying on its earlier opinion in *Myers v Interstate Motor Freight System,* 124 Mich App 506; 335 NW2d 19 (1983), found that plaintiff's written request for benefits could not have included a request for no-fault benefits.

This case differs substantially from *Myers* and *Robinson.* Here, Zurich wrote a policy of insurance that included a provision for no-fault benefits, including the payment of reasonable medical expenses for covered individuals injured in vehicular accidents. *See* Exhibit F. The Nebraska Medical Center sent a bill to Zurich which specifically referenced that policy of insurance. That bill included a request for reimbursement for medical services provided to an individual who had been involved in a motor vehicle accident. Unlike Myers and Robinson, the benefits that the

[7]Moreover, to state the obvious, there is nothing in the language of §3145(1) to suggest that the written notice sufficient to exempt a case from the one-year limitations period is only effective if the insurance company receiving that notice first has an "injury report on file."

Nebraska Medical Center was claiming were benefits that it would have been entitled to under the no-fault provisions of Zurich's policy.

Contrary to the arguments raised by Zurich, all of the requirements set out in §3145(1) for application of the written notice exception to that statute's one-year limitations period have been met.

RELIEF REQUESTED

Based on the foregoing, plaintiff-appellant, Dragen Perkovic, respectfully request that this Court reverse the Court of Appeals September 20, 2015 opinion and remand this case to the Wayne County Circuit Court for further proceedings. In the alternative, plaintiff requests that this Court grant leave to appeal to consider the question of whether the Court of Appeals properly interpreted MCL 500.3145(1).

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